

# Michigan Journal of International Law

---

Volume 14 | Issue 3

---

1993

## Explorations at the Edge of Time: The Prospects for World Order

Catherine Tinker

*The State University of New York at Buffalo*

Follow this and additional works at: <https://repository.law.umich.edu/mjil>



Part of the [International Law Commons](#), and the [Rule of Law Commons](#)

---

### Recommended Citation

Catherine Tinker, *Explorations at the Edge of Time: The Prospects for World Order*, 14 MICH. J. INT'L L. 445 (1993).

Available at: <https://repository.law.umich.edu/mjil/vol14/iss3/4>

This Book Review is brought to you for free and open access by the Michigan Journal of International Law at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

# EXPLORATIONS AT THE EDGE OF TIME: THE PROSPECTS FOR WORLD ORDER

By Richard A. Falk. Philadelphia: Temple University Press, 1992.  
ix + 255 pp.

*Reviewed by Catherine Tinker\**

In his newest book, Professor Richard Falk provides a theoretical framework for understanding the potential impact of "civil society"<sup>1</sup> in modifying the concept of state sovereignty as the bedrock of international relations, and in challenging exclusive executive authority in the areas of foreign policy and national security. Falk suggests that the transformative power of grassroots movements currently actively engaged in such issues as environment and development, women's rights and human rights, and democratization around the globe will propel us forward into a postmodern world unfettered by statist notions and outmoded concepts of territorial boundaries, self-determination, and the use of force. Falk identifies an area of great tension in international relations today: the failure—or unwillingness—of nation-states to heed or protect their own citizens, whether in the name of pursuing an expansionist foreign policy, defending a dictatorial regime, or pursuing economic development benefitting only the elite and destroying natural resources. In each of these situations, Falk urges citizens to exercise their rights to insist on the application of principles of international law when national policies and laws conflict with global duties and necessities. To the extent that states are flexible and able to accept responsibility, they retain legitimacy.

The dynamic of public participation cannot be suppressed even within the United Nations. The U.N. was structured at the end of World War II by the victorious powers and based on a model that locates authority in the nation-state. Yet paradoxically, nations that fully participate in the U.N. and support the goals of the U.N. Charter cede sovereignty to the international organization in important areas of decisionmaking:

---

\* Visiting Associate Professor of Law, The State University of New York at Buffalo, L.L.M. 1989, New York University; J.D. 1978, George Washington University; M.A. 1973, Occidental College; B.A. 1971, St. Olaf College.

1. Falk uses the more inclusive term "civil society" rather than the term "non-governmental organization" [NGO], used in the U.N. Charter, which defines groups by what they are not; in this case not nations. Civil society is a broader term than NGO, encompassing people's movements, individuals, local communities or ad hoc bodies, and other forms of collectivity. See RICHARD FALK, *EXPLORATIONS AT THE EDGE OF TIME: THE PROSPECTS FOR WORLD ORDER* 48-51 (1992).

collective security, economic and social policies, and the creation of new international law. State sovereignty is being undermined from many sides, on a global, transnational, and local level.<sup>2</sup> For example, what legitimacy does the notion of sovereignty have for those endangered souls in Bosnia-Herzegovina, Somalia, or elsewhere whose state is powerless to protect them? In fact, the situation in the former Yugoslavia confounds the notion of sovereignty, as Yugoslavia was an artificial construction that violated centuries-old boundaries on religious and ethnic lines and is now disintegrating back into ever-smaller configurations. Can the map of Africa long survive, given that the continent was carved into artificial states that violated tribal, linguistic, and clan boundaries at the time of decolonization?

Sovereignty is under attack, then, both from those who would restore autonomy to ethnic and religious groups by separating from a larger state, and from those who would derogate from sovereignty for a higher, global purpose such as protection of human rights or humanitarian intervention. This chipping away at sovereignty may be accelerated by the pressure to maintain sustainability of the planet; to balance its population, economic development, and environmental protection in a manageable fashion to allow sufficient resources for present and future generations. The nation-state, which has represented the fundamental unit of international politics, is changing in response to these natural forces and to the forces of democratization. Mark Zacher describes nations as the "decaying pillars of the Westphalian temple."<sup>3</sup> Elite hierarchies of decisionmakers can no longer impose policies on a citizenry demanding access to information; states increasingly will be held accountable for violations of duties to inform and notify others of threats to planetary survival, or for failure to prevent such harm. Such inroads are the beginning of a return to a concept of sovereignty rooted in the people, not in states.

Where the realists<sup>4</sup> see a threat to be resisted at all costs, Falk sees an opportunity for transformative process. He cites several positive examples of what he calls "evasion of sovereignty," or "political action by non-state actors that addresses the agenda of global concerns."<sup>5</sup> While there is a natural tendency to see the state as opposed to these patterns,

---

2. See, e.g., Professor Louis Henkin, Keynote Address at the International Law Association, American Branch, Annual Meeting (New York, November, 1992) (urging his audience to join him in contributing to the demise of state sovereignty).

3. Mark W. Zacher, *The Decaying Pillars of the Westphalian Temple*, in GOVERNANCE WITHOUT GOVERNMENT: ORDER AND CHANGE IN WORLD POLITICS (James N. Rosenau & Ernst-Otto Czempiel eds., 1992).

4. See FALK, *supra* note 1, at 214-27 (Falk's discussion of realist thought).

5. *Id.* at 205.

the concept is more ambiguous and may encompass actions not necessarily in opposition to the state, but which serve to reinforce the "order-producing and justice-realizing potential of the state system."<sup>6</sup> For example, Swedish women began the Great Peace Journey in 1988 to obtain answers from U.N. member nations to five fundamental questions on the goals of the U.N. Charter in areas such as disarmament, arms sales, development assistance, nuclear weapons, and government accountability under international law. This verbal, symbolic, and normative challenge to established forms of state power illustrated the right of "all people everywhere to insist that every government act for peace, justice, and environmental quality."<sup>7</sup> Other groups Falk mentions which challenge traditional notions of state power are Greenpeace, local whistleblowers, groups seeking corporate responsibility, and Amnesty International. To the extent that the modern state willingly gives way to a variety of alternative ordering frameworks and innovative formats for problem-solving, it will remain a source of authority. Falk concludes that "the state must learn to get out of its own way if over time it is to retain and regain the full plenum of its legitimacy;"<sup>8</sup> and he questions whether the state is "flexible enough to preside over its own partial dissolution, circumvention, and reconstitution."<sup>9</sup>

Modernism is thus being superseded by "the post-modern possibility," which Falk finds in grassroots movements: the germ of a global civil society grounded in transformative spiritual or religious commitment and in culture as a source of values which affirm both sameness and difference. For example, more activist groups are no longer content to be confined to a marginalized role after governmental policies have already been decided, but are demanding a voice in international law and organizations. The world order emphasis<sup>10</sup> shifts in response to an

---

6. *Id.* at 206.

7. *Id.* at 208.

8. *Id.* at 213.

9. *Id.*

10. Falk has long been associated with the concept of world order, in the casebook he co-authored and in a series of publications over several decades. Some of the themes in this book were first suggested in two volumes Falk edited with Kim and Mendlovitz, the latest being *THE UNITED NATIONS AND A JUST WORLD ORDER* (Richard A. Falk et al., eds., 1991). It is interesting to see how a creative thinker responds to the current agenda and builds on years of work in the anti-nuclear and peace movements (Falk's first environmental book was *RICHARD A. FALK, THIS ENDANGERED PLANET* (1971)) to suggest the next stage of political evolution, here called the "post-modern possibility." This work may make accessible to legal audiences more comfortable with anti-war or world-order analysis the shifting paradigms of futurist thinking, which incorporates concepts from biology and quantum physics. The danger is that such categorization limits the possibilities of such discourse by fitting it into well-known boxes. Readers should not be discouraged from

"assemblage of global initiatives that are expressions of a nascent transnational dimension of movements of democratization,"<sup>11</sup> including the environmental agenda, global interdependence, and economic integration which are redrawing the political map across national boundaries. Falk is at his most insightful in the final section, where he undertakes a critique of realism and neo-realism in international relations based on the observation that realism "takes for granted the persistence of modernist forms and capabilities at a period in history when these forms and capabilities are not able to address crucial dimensions of international life associated with globalizing environmental, economic, and ideational tendencies."<sup>12</sup> The process of democratization and transnationalization of sovereignty may nevertheless serve as a transition to the postmodern era.

The chapter on international law is perhaps the most interesting to readers of this journal. International lawyers are increasingly involved in the debate with international relations specialists over compliance with international law and the role of international institutions. Falk's critique of U.S. constitutionalism in foreign policy urges both a "reinterpretation of the separation of powers in the setting of foreign policy to upgrade the role of courts; and a possible structural adjustment . . . to assure disinterested judicial review of contested foreign policy decisions under international law."<sup>13</sup> This willingness to revisit the political question doctrine and to reexamine two centuries of a "spiral, cumulative trend toward concentration of power in the executive branch"<sup>14</sup> is a timely project in the mainstream of international legal scholarship, including that of Professors Franck,<sup>15</sup> Henkin,<sup>16</sup> and Koh.<sup>17</sup> Falk disagrees with Henkin's confirmation of the viability of existing arrangements, the

---

turning to the primary sources, such as HAZEL HENDERSON, *PARADIGMS IN PROGRESS: LIFE BEYOND ECONOMICS* (1991), or ELISE BOULDING, *BUILDING A GLOBAL CIVIC CULTURE: EDUCATION FOR AN INTERDEPENDENT WORLD* (1988), to explore other implications of their work which do not fit into the world order container. But for those unlikely to dip into non-linear thinking first hand, the Falk book provides a good introduction to other dimensions of concepts such as sovereignty, global civil society, and international organizations beyond the nation-state, while conceding a transition role for that entity.

11. FALK, *supra* note 1, at 54.

12. *Id.* at 159.

13. *Id.* at 162.

14. *Id.* at 163.

15. THOMAS M. FRANCK, *POLITICAL QUESTIONS, JUDICIAL ANSWERS: DOES THE RULE OF LAW APPLY TO FOREIGN AFFAIRS?* (1992).

16. LOUIS HENKIN, *CONSTITUTIONALISM, DEMOCRACY, AND FOREIGN AFFAIRS* (1990).

17. HAROLD H. KOH, *THE NATIONAL SECURITY CONSTITUTION: SHARING POWER AFTER THE IRAN CONTRA AFFAIR* (1990).

"push-and-pull of congressional-executive relations."<sup>18</sup> Falk supports Congressional activism, such as the War Powers Act, and urges the courts to reinterpret the pro-executive branch holding in *United States v. Curtiss-Wright Export Co.*<sup>19</sup> In suggesting that the courts are sidestepping a duty to assess the exercise of executive authority in the area of foreign affairs, Falk analyzes the development of international law on the use of force and limitations on the conduct of warfare, including the Nuremberg and Tokyo war crimes proceedings. Falk urges the extension of the Nuremberg principle that heads of state and policy makers are individually liable for crimes of state committed in relation to war. This extension is important in the modern world, where U.S. foreign policy is secretly conducted through covert operations (Iran in 1953, Guatemala in 1954, and Iran-Contra in the 1980's), and in violation of international law (the mining of the harbor in Nicaragua, invasions of Grenada and Panama, and the bombing of Libya, all in the 1980's). Cases brought by protesters or against participants in civil disobedience in the United States, beginning with the Vietnam War and continuing through the Sanctuary Movement, involve symbolic action meant to provoke public discussion, and moral as well as legal assessment in the course of judicial proceedings. In these cases, citizens may be arrested for trespass or other charges stemming from their protest. Falk suggests that Congress should declare that "the courts should adjudicate *substantively* whenever a defendant invokes an international law argument as an integral element in a defense against criminal charges."<sup>20</sup>

In analyzing the "integrative tendencies" of international life, Falk understands the creative and transformative force of new grassroots movements, noting especially the current wave of global feminist, environmentalist, and peace groups. He pins his practical "rooted utopianism" on the potential for these groups to cause a bottom-up democratization of policy making, realizing a vision of foreign policy which would be accountable under international law for respecting the rights of citizens and of the planet. His vision of a "participatory foreign policy" on the national level, particularly in the United States, is encouraging. His view is supported by recent institutional developments occurring at the United Nations during the preparatory meetings for the

---

18. FALK, *supra* note 1, at 170.

19. *United States v. Curtiss-Wright Export Co.*, 299 U.S. 304 (1936). Dictum in this case is often cited: "[T]he President alone has the power to speak or listen as a representative of the nation." *Id.* at 319. Obviously, this assertion is anathema to Falk and others.

20. FALK, *supra* note 1, at 176 (emphasis in the original).

United Nations Conference on Environment and Development (UNCED) and in new treaty language which provides for exactly this sort of participation by "non-state actors."<sup>21</sup> Such a development in this statist club portends the same postmodern possibility that Falk describes throughout his book.

In his chapter on "nuclearism,"<sup>22</sup> Falk deals exclusively with nuclear war and threats to use nuclear weapons. His analysis of the fallacy of nuclear deterrence is well-reasoned—and should be required reading for everyone in the new Administration in Washington as well as in Moscow, Karachi, Pyongyang, and elsewhere—but it is surprising that he makes only passing references to non-military uses of nuclear power. These uses carry grave environmental risks, from meltdowns as occurred at Chernobyl to improper disposal of radioactive wastes, whether on land or in the deep seabed. Falk clearly understands the nature of the nuclear threat to the environment as well as to human life, and argues eloquently for dismantling arsenals. There is inadequate international law on this subject, and existing instruments dealing with nuclear safety, early warning, and notification in case of an accident exempt military installations and national security secrets from disclosure. Falk's argument would be strengthened by an examination of the current negotiations for a nuclear safety convention under the auspices of the U.N.'s International Atomic Energy Agency. The active role some environmental groups and other representatives of civil society are playing gives further emphasis to Falk's thesis, and suggests ways in

---

21. This "opening" was apparent during preparations for the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil, in 1992, as some 1,500 accredited non-governmental organizations and peoples' movements participated in drafting documents and discussing the ideas which became Agenda 21 and the Rio Declaration on Environment and Development. When the official documents backed away from important concepts through the process of diplomatic bargaining, the representatives of this global civil society adopted their own documents in the alternative "Global Forum," conducted in parallel to the Earth Summit meeting of heads of state. The significance of these events from the perspective of international organizations and foreign policy, however, lay in the fact that the elements of civil society were not marginalized in a secondary location while the main show went on elsewhere behind closed doors. Rather, the preparatory meetings of UNCED were enriched by the active participation of non-governmental groups accredited to the conference and empowered to speak from the floor of the working-group meetings and to submit documents. Because many of these groups had more technical knowledge and commitment to the principles at stake in the draft Rio Declaration and the action plan, government delegations requested their input, met regularly in briefing sessions, and, in some cases, included NGO representatives in the official government delegation. To carry this level of popular involvement beyond Rio, the new institutional body created to implement Agenda 21, the Commission on Sustainable Development, is establishing a procedure whereby those groups accredited to the UNCED meetings may continue to participate in the meetings of the new Commission, at least as observers.

22. FALK, *supra* note 1, at 178-95.

which international law is beginning to create duties and obligations for nation-states to provide access to information, accountability, and responsibility towards citizens and the planet.

Falk's major point, however, remains that meaningful participation and "bottom-up democratization" will only matter in the long run if they are practiced in the formerly sacrosanct areas of domestic foreign policy decisionmaking and national security policymaking. This entails redefining "security" to include economic, social, and environmental threats to stability,<sup>23</sup> and "shifting the locus from 'national security' (part versus part) to 'common security' or 'comprehensive security' (parts depending on the whole)."<sup>24</sup> The challenge for civil society, states, and international institutions is to make the leap into a more integrative, less territorial, postmodern world.

---

23. For a contrary view demonstrating the dangers of facile acceptance of phrases like "environmental security" as threats to international peace and security within the context of the U.N. Security Council, see Catherine Tinker, *Environmental Security in the United Nations: Not a Matter for the Security Council*, 59 TENN. L. REV. 787 (1992).

24. FALK, *supra* note 1, at 204.